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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/491,747	01/27/2000	Brad S. Konia	9403-0F255US0	9009

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EXAMINER

KARMIS, STEFANOS

ART UNIT	PAPER NUMBER
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3624

DATE MAILED: 03/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/491,747

Applicant(s)

KONIA, BRAD S.

Examiner

Stefano Karmis

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 December 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-22, 26 and 27 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-22, 26 and 27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

1. The following communication is in response to Applicant's amendment, filed 09 December 2004.

Status of Claims

2. Claims 1 and 11 are currently amended. Claim 23 is withdrawn. Claims 24 and 25 are cancelled. Claims 26 and 27 are previously amended. Claims 2-10 and 12-22 are left as originally filed. Therefore claims 1-22, 26 and 27 are under consideration.

Response to Arguments

3. Applicant's arguments with respect to claims 1-22, 26 and 27 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are

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such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

6. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

7. Claims 1-3, 11-13 and 22-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fisher et al. (hereinafter Fisher) U.S. Patent 5,835,896 in view of Borgeson et al. (hereinafter Borgeson) U.S. Publication 2003/0236739.

Claims 1-3, 11-13 and 22-25 stand rejected under 35 U.S.C. 102(b) as being anticipated by Fisher et al. (hereinafter Fisher) U.S. Patent 5,835,896 as stated in the previous office action, mailed 30 November 2004. Regarding claim 1, Applicant has amended the claim to include "the auction having at least two or more positions of priority, the received bid management data including information for selecting one of the two or more positions of priority that the first bidder wished to maintain in the auction."

Fisher teaches a method and system for processing and transmitting electronic auction information comprising receiving bid management data from a first bidder for managing bidding by the bidder in the auction the received bid management information including a selected position of priority (column 6, lines 31-45); checking for if a second bidder hold the selected position of priority, and checking for whether a first bid from the first bidder exceeds a second bid from a second bidder in an auction for determining continuing priority for providing an ongoing service for the first and second bidder, wherein the relative priority for the providing service for the first bidder is dependent on whether the value of the first bid exceeds the value of the second bid, and wherein the relative priority for providing the service for the second bidder is dependent on whether the value of the second bid exceeds the value of the first bid (column 10, lines 6-28 and column 11, lines 21-43); according to the bid management data received from the first bidder, automatically incrementing the first bid to a value exceeding the second bid if the first bid does not exceed the second bid, thereby causing the relative priority for providing service for the second bidder (column 9, lines 18-35); and a database electrically connected to the processor for storing first and second bids (column 6, lines 39-45 and Figure 4); and automatically reducing the first bid to a minimum which allows the bidder to keep the selected position of priority if the first bid exceeds a value needed to maintain the selected position of priority (column 9, lines 17-35 and Figure 3 and column 12, line 63 thru column 13, line 8).

Fisher teaches selecting a bidding position, specifically the highest ranking bid position (column 6, lines 31-45). Fisher checks for whether a first bid is higher than needed to maintain the selected position (in this case, the highest ranking position) of priority the first bidder wishes to maintain in the auction, and if the first bid is higher than needed to maintain the selected position

of priority that the first bidder wishes to maintain in the auction, automatically reducing the first bid to a minimum which allows the bidder to keep the selected position of priority (column 9, lines 17-35 and column 12, line 63 thru column 13, line 8 and Figure 3).

Fisher fails to teach, that the auction has a least two or more positions of priority, and the received bid management data including information for selecting one of the two or more positions of priority that the first bidder wished to maintain in the auction. Borgeson teaches a bid positioning system in which potential buyers can specify a position priority relative to other bids (page 3, paragraph 0036 and Figure 6). Continuing, Borgeson teaches checking for whether a first bid from a buyer exceeds a second bid from a second buyer and incrementing or decrementing the bid to maintain the desired position without passing upper or lower limitations set by bid ceilings and bid floors (page 1, paragraph 0006 and page 3, paragraph 0038). It would have been obvious to one of ordinary skill in the art to modify the proxy bid teaching to gain the highest position as taught by Fisher to include the teachings of Borgeson and allow proxy position bidding for other positions because auctions often reward more buyers than solely the highest/lowest winning bid.

Claim 11 contains similar limitation to that of claim 1 above and therefore follows the same reasoning of rejection. Claims 2-10, 12-22, 26 and 27 are either rejected based upon dependency or remain rejected as stated in the previous office action, mailed 21 April 2004. Therefore claims 1-22, 26 and 27 remain rejected and Applicant's request for allowance is respectfully declined.

Conclusion

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stefano Karmis whose telephone number is (703) 305-8130. The examiner can normally be reached on M-F: 8-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vincent Millin can be reached on (703) 308-1065. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Respectfully Submitted
Stefano Karmis
17 March 2005



HANI M. KAZIMI
PRIMARY EXAMINER